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OCT 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

October 26, 1998

Via HAND DELIVERY

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

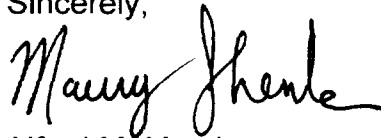
**Re: Forbearance from Applying Provisions of the Communications Act to
Wireless Telecommunications Carriers, WT Docket No. 98-100**

Dear Ms. Salas:

Enclosed for filing on behalf of Stratos Mobile Networks (USA), LLC are an original and four copies of the Reply to Opposition of COMSAT Corporation to Petition for Reconsideration in the above-referenced proceeding. Also enclosed is an additional copy of this submission, which we request that you date stamp and return with our messenger.

Please do not hesitate to contact us if you have any questions.

Sincerely,



Alfred M. Mamlet
Maury D. Shenk

Enclosures

No. of Copies rec'd 024
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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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OCT 26 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Forbearance from Applying Provisions of the
Communications Act to Wireless
Telecommunications Carriers**

WT Docket No. 98-100

To: The Commission

**REPLY TO OPPOSITION OF COMSAT CORPORATION
TO PETITION FOR RECONSIDERATION**

Stratos Mobile Networks (USA), LLC ("Stratos"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. § 1.429, hereby replies to the Opposition of COMSAT Corporation to Petition for Reconsideration ("Opposition") in the above-captioned proceeding.

I. Detariffing Is Not Appropriate For COMSAT's Inmarsat Services, For Which COMSAT Is A Dominant Carrier

In its Order¹ in this proceeding, the Commission adopted permissive detariffing for the international services of commercial mobile radio service ("CMRS") carriers, without considering (apparently inadvertently) that CMRS includes Inmarsat services for which COMSAT Corporation ("COMSAT") is a dominant carrier. As stated in

¹ Forebearance from Applying Provisions of the Communications Act to Wireless Telecommunications Carriers, WT Docket No. 98-100 (rel. July 2, 1998) ("Order").

Stratos' Petition for Reconsideration, detariffing of COMSAT's Inmarsat services is therefore inappropriate.²

COMSAT first responds that "the real issue raised in Stratos' petition is whether MSS services such as those provided by COMSAT should be considered CMRS services in the first place."³ This is plainly not the real issue and is not in dispute. Stratos and COMSAT agree that CMRS includes MSS,⁴ as the Commission has decided.⁵

COMSAT also contends that "Stratos provides no evidence whatsoever" to support continued tariffing of COMSAT's Inmarsat services.⁶ However, COMSAT contradicts this contention by responding to the evidence that Stratos provided regarding COMSAT's exclusive status and U.S. Signatory of Inmarsat, Inmarsat-related privileges and immunities, and anticompetitive claims to a monopoly over U.S.-originated Inmarsat services.⁷

² See Petition for Reconsideration of Stratos Mobile Networks (USA), LLC, WT Docket No. 98-100, at 2-4 (filed Sept. 10, 1998) ("Petition").

³ Opposition at 3.

⁴ See Petition at 1 & n.2; Opposition at 3.

⁵ See Implementation of Sections 3(n) and 332 of the Communications Act, 9 FCC Rcd. 1411, 1424 (1994) (mobile satellite services are CMRS).

⁶ Opposition at 4.

⁷ See Petition at 3; Opposition at 4-5. Among other things, COMSAT says that Stratos claims "unspecified" privileges and immunities and that "mantra-like intonations of 'privileges and immunities' do not suffice." Opposition at 4. COMSAT's privileges and immunities include, most importantly, immunity from antitrust liability with respect to Inmarsat-related activities. See Alpha Lyracom Space Communications, Inc. v. Communications Satellite Corp., 946 F.2d 168 (2d Cir. 1991) (antitrust immunity for COMSAT's INTELSAT-related activities), cert. denied, 502 U.S. 1096 (1992). Furthermore, COMSAT's consistent refusal to waive its privileges and immunities in applications to provide U.S. domestic Inmarsat services and its pending appeal on this

(Continued ...)

The central, undisputed fact in this proceeding (and the real issue) is that with respect to Inmarsat services the Commission regulates COMSAT as a dominant carrier that has market power.⁸ The Commission continues to require tariffs to be filed by a CMRS provider on routes where it is affiliated with a foreign carrier that collects settlement payments from U.S. carriers – i.e., where the CMRS provider has market power and the ability to harm competition.⁹ The Commission also requires all dominant domestic wireline carriers and all international carriers to file tariffs.¹⁰ Apparently, the only reason that the Commission in the Order did not similarly require COMSAT to continue to file tariffs as a dominant provider of Inmarsat services is that it overlooked the issue. The Commission should correct this oversight and require continued tariffing of COMSAT's Inmarsat services.

issue, see COMSAT Corp. v. FCC, File No. 98-1011 (filed Jan. 12, 1998), bely the implication of its Opposition that these privileges and immunities are minimal or illusory.

⁸ See Regulation of International Common Carrier Services, 7 FCC Rcd. 577, 581 (1992) (COMSAT dominant for provision of INTELSAT and Inmarsat services); see also COMSAT Corporation, 1998 FCC LEXIS 1974 (rel. Apr. 28, 1998) (reclassifying COMSAT as non-dominant on certain routes with respect to INTELSAT services only). COMSAT's claim of less than a 15 percent market share for Inmarsat services, see Opposition at 5, misleadingly relies on COMSAT's share of the world market for Inmarsat services. In the U.S. market, COMSAT retains a dominant market share due to its anticompetitive advantages, notwithstanding the far lower prices offered by competitive providers like Stratos.

⁹ See Order at ¶ 60 (on affiliated routes "the carrier and its affiliate may have the ability and incentive to engage in anticompetitive pricing behavior that can harm competition and competitors in the U.S. market").

¹⁰ See 47 C.F.R. Part 61.

II. Detariffing Is Appropriate For Fixed-to-Mobile and Mobile-to-Mobile MSS Provided by Foreign-Affiliated Carriers

The Stratos Petition also explains that detariffing is appropriate for international mobile satellite services ("MSS") provided by foreign-affiliated carriers.¹¹ COMSAT agrees.¹²

Not surprisingly, COMSAT contends that it also should be entitled to such further detariffing.¹³ Stratos agrees that the same benefits should apply to COMSAT, but not while COMSAT remains a dominant carrier. A Commission finding of non-dominance will not be appropriate at least until COMSAT waives all Inmarsat-related privileges and immunities and abandons its anticompetitive claim of monopoly with respect to provision of space segment for U.S.-originated Inmarsat services.¹⁴

COMSAT also suggests that further detariffing would be unfair because "Stratos would continue to enjoy the benefits of its corporate parent's monopoly in Canada, a market in which U.S. MSS carriers like COMSAT are not permitted to sell their services."¹⁵ To the contrary, as Stratos has recently demonstrated to the Commission, the

¹¹ See Petition at 4-5.

¹² See Opposition at 5 ("COMSAT does believe that across-the-board permissive detariffing of these services is warranted").

¹³ See id.

¹⁴ See Petition at 3.

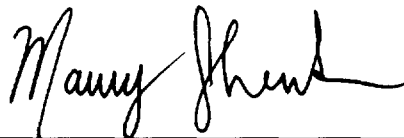
¹⁵ Opposition at 5.

Canadian MSS market is fully open to any U.S. company that takes the simple step of establishing a Canadian subsidiary.¹⁶

III. Conclusion

For the reasons set out above, Stratos respectfully requests that the Commission reconsider the detariffing portion of the Order. The Commission should (1) order COMSAT to continue to file tariffs for Inmarsat services on all international routes and (2) extend extend permissive detariffing to all international fixed-to-mobile and mobile-to-mobile MSS calls (other than those carried by COMSAT).

Respectfully submitted,



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October 26, 1998

¹⁶ See Letter from Steptoe & Johnson LLP to the Commission, File Nos. ISP-98-003, ITC-98-103, ITC-97-594, ITC-97-450 (Oct. 19, 1998).

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Reply to Opposition of COMSAT Corporation to Petition for Reconsideration was served this 26th day of October 1998, by hand delivery (or first class mail where indicated by an asterisk(*)) on the following:

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